

**Town of Lincoln**

**100 Old River Road, Lincoln RI**

**Zoning Board of Review**

**February 7, 2006 Minutes**

**Present: Raymond Arsenault, Kristin Rao, Nicholas Rampone, David Gobeille, Gabriella Halmi, Attorney Mark Krieger**

**Excused: Arthur Russo, Jr.**

### **Minutes**

**Motion made by Member Rao to accept the January 3, 2006 Minutes as presented. Motion seconded by Member Rampone. Motion carried with a 5-0 vote.**

### **Correspondence/Miscellaneous**

**Chairman Arsenault informed Board members that Member Rampone spoke with Member King who tendered his resignation from the Zoning Board of Review because he moved out of Limerock, which is the district he represented on the Board. Member Rampone left a message with the Councilman from the Limerock district informing him of the vacant seat.**

**Chairman Arsenault read into the record a letter dated January 29, 2006 from Martha Punchak complaining of an on-going problem with a gas generator running after hours on Twin River Road to light signage for Lincoln Park construction. There is no ordinance which**

addresses this type of signage complaint. The Zoning Board is not the enforcing body for this type of complaint and Russell Hervieux, Zoning Official asked the Town Solicitor to become involved. Attorney Krieger contacted Lincoln Park who agreed to remove the signs and would come before this Board in the future to seek a variance for signage. Follow-up correspondence will be sent to Mrs. Punchak.

Member Rampone sat with full privileges.

### **Applications**

Michael Ricci, 1805 Old Louisquisset Pike, Lincoln, RI – Dimensional Variance for the creation of a second lot.

AP 25, Lot 178 Zoned: RA 40

Chairman Arsenault informed applicant there was a problem with his application in that it was for one set of variances and they are now requesting modification to the application. The problem was that the application was advertised and the Board will listen to applicant to see if they can proceed or continue the application to the March agenda. Chairman also informed applicant what standards needed to be met for a Dimensional Variance.

Represented by: Campanella & Mills, 222 Jefferson Boulevard, Warwick, RI

**Witness:**

**Thomas Ricci, 1803 Old Louisquisset Pike, Lincoln, RI**

**He is applicant's father and has lived on Old Louisquisset Pike for 18 years. Son lives next door at 1805 Old Louisquisset Pike and daughter lives at 1801 Old Louisquisset Pike. He bought the property 18 years ago and split the lots to keep property in the family. His house is too big and he wants to downsize and build a house next door that belongs to Michael and his granddaughter will move into his house. This matter came before this Board in December. The Planning Board reviewed the plans and made suggestions for modifications. The new plan modifications were for rear property line.**

**The property line next to the driveway would give him more square footage above the buffer zone. Frontage line was reduced from 65 feet to 55 feet to give more square footage to the lot in front. Access to the new lot would be through an existing driveway to minimize wetlands along the street line on Louisquisset Pike. There are other similar sized lots in the area within a half-mile area. Rear lot would contain 50,953 square feet and front would contain 52,741 square feet, which complies with square footage requirements. Attorney Krieger informed applicant's attorney that was not correct. Attorney Campanella went on to say that applicant was advised by the Planning Board that under the zoning ordinance only those parts of that lot which are outside of the 50,000 foot wetlands buffer, as indicated on the plan, apply.**

**Chairman asked Attorney Krieger if that rose to the level of a simple**

application modification that the Board could vote on. Attorney Krieger replied that was a factor that could be considered as the Planning Board suggested changes. Another consideration was the Planning Board has not seen the new plan and may have a different take on it and the Board has to consider the change and rear yard variance. There are two additional variance that were not advertised or reviewed by the Planning Board. The Zoning Board does not have authorization to bring variances on subdivision regulations.

Attorney for applicant stated if this Board sees fit to require him to resubmit a new application they would be willing to do that and return in March.

The second modification to the application was for a 2' 6" side setback for what is proposed as Lot A (existing house). Russell Hervieux, Zoning Official stated that under the new lot layout that dimension is for a rear setback. The dotted line on the left hand side going up from Old Louisquisset Pike is the side setback. When it turns 90 degrees it becomes the rear setback which is common to the adjacent lot and they need a variance. Third dimensional request is for lot width.

Attorney Krieger informed Chairman Arsenault that if the Board requires a new application that applicant address the standards. Chairman Arsenault recommended that applicant withdraw his application without prejudice and resubmit a new application and

**allow the Technical Review Committee time to review new plans. He also informed applicant that the existing driveway needs to appear on the new plans.**

**Attorney for Applicant requested that the application be withdrawn without prejudice.**

**Motion made by Member Rampone to accept applicant's request to withdraw his application without prejudice. Motion seconded by Member Gobeille and motion carried with a 5-0 vote.**

**Tiffany Plaza Limited Partnership, c/o Richard E. Kirby, Esquire, 72 Pine Street, Providence, RI/Tiffany Plaza Limited Partnership, c/o Michael Berkowitz, 60 McGarvey Road, Stoughton, MA – Extension of Dimensional Variance for construction of retail space building on Reservoir Avenue, Lincoln, RI  
AP 6, Lot 442 Zoned: BL-0.5**

**Represented by: Richard E. Kirby, Esquire**

**Russell Hervieux, Zoning Official informed the Board there was a notice issue. Two notices were returned. One return address was as provided by the Tax Assessors Office and the other was obtained from a City of Pawtucket tax card. Mr. Hervieux contacted Attorney Kirby who researched and supplied him with a copy of the field card list the address. Attorney Krieger informed him that sufficient notice**

was given.

Applicant is before this Board asking for extension of a decision granted May 2004 for parking and setbacks. As requested by this Board, applicant provided a new abutter list and application. He also provided a copy of the transcript from the May 2004 meeting which he submitted as Exhibit #1. Nothing has changed on the application and applicant is now asking for a one month extension. There would be a hardship on the applicant if his request for an extension were denied. The original decision expired May 2005 and applicant was granted an extension in July 2005 which expired in November 2005. Applicant now has a builder in place to start construction.

Chairman Arsenault read into the record Planning Board recommendation:

The Planning Board and members of the Technical Review Committee reviewed the submitted application for a time extension of a dimensional variance. The Planning Board recommends Approval of the application for a time extension for a dimensional variance. The Board feels that the applicant has been diligently working to start construction of the project within the one year time frame but time ran out.

Motion made by Member Halmi to grant a five month extension of the November 5, 2005 decision which will expire on April 5, 2006. Motion seconded by Member Gobeille and motion carried with a 5-0 vote.

**Joseph Kishfy, 22 Dennell Drive, Lincoln, RI – Special Use Permit to add six new dwelling units to six existing units for a total of twelve units, two of which shall be eligible for low or moderate income dwelling units on property located at 143 Reservoir Avenue, Lincoln, RI.**

**AP 6, Lot 437 Zoned: RG 7**

**Represented by: Peter Ruggiero, Esquire**

**Chairman Arsenault read into the record standards that needed to be met for a Special Use Permit.**

**Applicant wants to construct an additional six units to six existing units bringing total to 12 units. Applicant has appeared before the Town Council for a zone change and was approved. Technical Review Committee and Planning Board have already reviewed the plans.**

**Witness:**

**Joseph Kishfy (Applicant)**

**He is the owner and applicant. Existing property has 6 units – five 2-bedroom and one 1-bedroom. Three garages on property will be demolished to make room for new units. Town Council stipulated that two units be devoted to low/moderate income. Applicant's engineer has prepared plans that meet zoning requirements.**

**Applicant meets the zoning requirement of 24 parking spaces. Chairman Arsenault asked applicant if he could identify the 24 parking spaces on the plan. Applicant showed Board location of parking spaces. Lighting at the site also meets zoning. Attorney Ruggiero informed the Board that plans need to go before the Planning Board for site plan review for drainage, lighting and landscaping.**

**Member Halmi stated that the lot width requires 170 feet and the proposal is 123 feet. Chairman Arsenault informed Member Halmi that the applicant testified that they received a zoning change to RG 7 which appears to have a minimal lot width of 60 feet. Member Halmi replied that on their chart that is not what it says. Attorney Ruggiero replied that at the time it was zoned BL 05. Attorney Krieger also stated that it is plus 10 feet for every unit over one. Attorney Ruggiero stated they were not aware of that and if it is the Board's interpretation that they need that relief and it needs to be advertised they would resubmit their application.**

**Member Halmi asked if any children lived in the existing units and applicant replied yes. She asked where they play and applicant replied the units abut Fairlawn Park. Member Halmi asked about trash removal. Applicant replied that the Town currently picks up trash at the site but they would be installing dumpsters. Member Rao asked about signage and applicant replied any signage installed at**



**the site would comply with the zoning code.**

**Witness:**

**Joseph D. Lombardo, Land Use Planning Consultant, 11 Grancera Drive, Hope Valley, RI**

**He has appeared before this Board on other applications (submitted his resume as Exhibit #1). Motion made by Member Rao to accept Mr. Lombardo as an expert witness. Motion seconded by Member Gobeille and carried with a 5-0 vote.**

**He has been retained by the applicant to prepare a planning report. Lot contains 24,400 sq.ft. with one 6-unit building on the site with a proposal for another 6-unit building. With the recent zoning change, minimum land area required for a 12 multi-family residential units in an RG 7 zone is 23,500 sq.ft. Recent zone change meets the square footage requirements and multi family is permitted at this site. This is a suitable location for this type of project. Lincoln is currently at 7.5% with minimum housing requirements trying to reach the required 10%. It is his recommendation that the application is consistent with the town's comprehensive plan.**

**Chairman Arsenault read into the record Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Approval of this application. Based on a site**

visit, the Planning Board feels that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the surrounding residential neighborhood. The Planning Board feels that the special use permit will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance, nor the Comprehensive Plan.

Attorney Ruggiero asked that the Board continue the application to the March agenda to properly advertise the application and address the dimensional issues regarding lot width.

Member Halmi made a motion to continue the application to the March agenda. Motion seconded by Member Rampone and motion carried with a 5-0 vote.

Albion Place, LLC, 6 Blackstone Valley Place, Lincoln, RI – Use Variance for the construction of six new dwelling units on property located at 2 Main Street, Lincoln, RI

AP 32, Lot 44 Zoned: BL 05

Chairman Arsenault read into the record standards that needed to be met for a Use Variance.

Represented by: Peter Ruggiero, Esquire

The Planning Board suggested applicant come before the Zoning

**Board seeking a use variance. Existing site has an L-shaped building and applicant wants to add a wing. That wing currently is owned by the applicant only in the sense of a special declarant right in a condominium. The entire project has been converted into condos and applicant only owns the right to create a structure that is being proposed before the Board. All existing units are privately owned.**

**Witness:**

**Richard Lipsitz, President Waterman Engineering**

**He is a licensed professional surveyor and has appeared before this Board in the past. Motion made by Member Rao to accept him as an expert witness. Motion seconded by Member Gobeille and carried with a 5-0 vote. Existing lot is 40,000 sq.ft. with 200 frontage on Main Street and is an L-shape three story building. Applicant wants to add a wing to the building. Existing entrance will remain the same. Applicant has looked into drainage, parking, and lighting and needs to appear before the Planning Board and Technical Review Committee for site plan review. Plan meets required number of parking spaces – 43 regular plus 2 handicap. Building has not been designed yet. Front and side yard setbacks are not changing. Trash receptacles will be located behind the building. Technical Review Committee is in favor of the project.**

**Witness:**

**Arthur Eddy, Landscape Designer**

**He has appeared before other Boards. Motion made by Member**

**Halmi to accept Mr. Eddy as an expert witness. Motion seconded by Member Rampone and carried with a 5-0 vote.**

**Parking will be improved and applicant intends to plant evergreens to hide the building. The courtyard will also have plantings along the edge to reduce visibility of the building. Lighting at the site will be non-intrusive. Emergency vehicles would enter through the courtyard area. They intend to meet with the Planning Board and fire chief to address any of their concerns. There are currently six 1-bedroom in the existing building and nine 2-bedroom units. Proposal is for all 2-bedroom units.**

**Witness:**

**George D. Caldow, AICP, Caldow Associates, 62 Lakeside Drive, Coventry, RI**

**He has appeared before this Board in the past and submitted his resume as Exhibit #1. Motion made by Member Rao to accept Mr. Caldow as an expert witness. Motion seconded by Member Halmi and motion carried with a 5-0 vote.**

**He has been retained by applicant to prepare a land use report (submitted as Exhibit #2). Witness proceeded to read from his report.**

**The site is zoned for legally existing multi-family land use. Property is located in Albion Village which is predominantly historic and multi family and consistent with the town's comprehensive plan. Units will sell in the low \$200,000s.**

**Chairman Arsenault read into the record Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Approval of this application. The proposed project represents the expansion of an existing multi-family use on the parcel. Based on a site visit, the Planning Board feels that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the surrounding residential neighborhood. The Planning Board feels that the use variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance, nor the Comprehensive Plan.**

**The Zoning Official presented Chairman Arsenault with a zoning certificate which states that the current use of this residential housing is legal pursuant to a variance that was granted December 7, 1970 as a use variance to erect a 15 unit multifamily house after removing a structure on the lot. There are no zoning violations on record for this property.**

**Opposed:**

**Sandra Mohammed, 34 Briarwood Road, Lincoln, RI**

**Her home is located behind the existing building and it is very noisy with music being played at all hours. Afraid this will become worse**

after additional units are built. There is also a golf club behind the property. There was confusion among the Board members as to the location of her lot. She owns lot 136 but there was a typographical error on the abutter's list which listed her as the owner lot 133. She has never complained about the noise to the condominium association but just closes her windows to block out the noise. Chairman Arsenault recommended she contact the Zoning Official about the noise.

**Opposed:**

**Peter Dandurand, 599 Broad Street, Cumberland, RI**

He is the President of Albion Place condominiums and is also an owner. He is appearing before the Board on behalf of the association.

They are concerned about parking - there are 30 existing parking spaces. He has not seen the plans and would like to look at them and how the new units will affect parking. Parking is only on one side of the building. Snow removal is also a concern. There are four 1-bedroom units and eleven 2-bedroom units at the site. Will addition be attached to existing building or be a free standing structure? Association has addressed the noise level complaint by sending letters to all the unit owners that have tenants. Chairman Arsenault informed Mr. Dandurand that our code requires two parking spaces per unit and 21 units require 42 parking spaces which applicant needs to comply with.

**Opposed:**

**Mark Gauthier**

**He is concerned about fire apparatus and rescue access to the site. Snow removal may also be an issue. This is a historical area and he does not feel proposal will fit into the area.**

**Chairman Arsenault informed Attorney Ruggiero that there was a notice issue. What the radius map showed is correct but the abutter's list omitted notice to Lot 133 which resulted in a notice error. Attorney Ruggiero replied that they made a typographical error on the abutter's list. Attorney Ruggiero replied applicant will refile so proper notice can be mailed.**

**Attorney Ruggiero informed the Board that three weeks prior to the meeting, applicant met with representatives from the condo association and offered to review and discuss the plans and provided individual notice. There was no negative feedback. Attorney Ruggiero asked that the application before the Board this evening be continued to the March agenda.**

**Motion made by Member Halmi to continue the application to the March agenda. Motion seconded by Member Gobeille.**

**Member Rao asked how long applicant has owned the property. Applicant replied they purchased the rights just over one year ago. Member Rao further asked why they would get involved in this situation before getting approval to build.**

**Witness:**

**Robert Brown, Diamond Hill Road, Cumberland, RI (Owner)**

**He approached the seller just over one year ago with the intention of converting to condo units. When they were negotiating the fair market value property it was for the existing 15 units in addition to additional units which they wanted to build. They converted to condos and then sold them as individual units.**

**Member Halmi stated that when applicant purchased the property there was no guaranty that they would receive approval to construct the additional units are not denied beneficial use. They just want to maximize their profits and own the building. Attorney Krieger advised Member Halmi that applicant does not own the units but sold everything. Prior to the declaration of condominium, the original owners reserved declarant rights to future developments on that site. They have sold all the units and a condominium association owns the common area but they still maintain declarant rights. Attorney Ruggiero stated they are only being taxed by the town on the undeveloped declarant rights.**

**Motion carried with a 5-0 vote.**

**Motion made by Member Rao to adjourn the meeting. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**



**Respectfully submitted,**

**Ghislaine D. Therien**

**Ghislaine D. Therien**

**Recording Secretary**